In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 7302-CAT of 1998

Date of Decision: 14.03.2007

Ram Kishan Hooda

....Petitioner

Versus

Union of India and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. Maharaj Kumar, Advocate
for the petitioner.

Mr. Gurpreet Singh, Advocate
for the respondents.

...

J.S. Khehar, J. (Oral).

The petitioner was inducted into the service of the Delhi Sorting Division under the Department of Posts, on 6.8.1973 against the post of Sorting Assistant. The petitioner was placed under suspension on 2.8.1987 on account of pendency of criminal proceedings against him, emerging out the registration of a First Information Report dated 24.7.1987, under Sections 302, 148 and 149 of the Indian Penal Code. The trial of the aforesaid case was entrusted to the Additional District and Sessions Judge, Rohtak. On the culmination of the criminal proceedings, the petitioner was convicted by the Additional District and Sessions Judge, Rohtak, on 30.7.1988. Accordingly, the petitioner was sentenced to undergo rigorous

imprisonment for one year for the offence punishable under Section 148 of the Indian Penal Code, and to undergo rigorous imprisonment for life under Sections 302/149 of the Indian Penal Code, and to pay a fine of Rs.200/-, and in default of payment of fine, to undergo further rigorous imprisonment for three months. Consequent upon the conviction of the petitioner, he was dismissed from service by an order dated 31.10.1989 (Annexure P-1). It needs to be highlighted, that the order of dismissal of the petitioner from service dated 31.10.1989, is not subject matter of challenge before this Court. It also needs to be noticed, that the appeal preferred by the petitioner against the order passed by the Additional District and Sessions Judge, Rohtak, dated 30.7.1988, was also dismissed by this Court, on 22.8.1990.

It is in the aforesaid circumstances, that the petitioner moved a representation under Rule 41 of the CCS Pension Rules, 1972 (hereinafter referred to as the 1972 Rules). Rule 41 of the 1972 Rules, is being extracted hereunder:-

> "41. Compassionate allowance.
>
> (1) A government servant who is dismissed or removed from service shall forfeit his pension and gratuity:
>
> Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.
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> (2) A compassionate allowance sanctioned under the proviso to sub rule (1) shall not be less than the amount of Rupees three

hundred and seventy five. (Rupees one thousand two hundred seventy five from 1.1.1996) per mensem."

The representation made by the petitioner, claiming compassionate allowance, was rejected by the respondents vide an order dated 16.5.1995. The order dated 16.5.1995 was challenged by the petitioner by filing Original Application No.146-HR of 1995 before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the Administrative Tribunal). The aforesaid application was disposed of by the Administrative Tribunal vide its order dated 3.12.1996. Relevant extract of the aforesaid order is being reproduced hereunder:-

> ".....It is from reading of Annexure A-1 that the only factor considered and replied by the respondents is to the following effect:-
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> > "As the ex-official has involved himself in a heinous crime i.e. murder case, his conduct does not deserve any sympathetic consideration for the sanction of compassionate allowance."
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> Reading of this confirms this Tribunal in its opinion that the competent authority did not consider all the factors relevant under Rule 41 of the Pension Rules ibid. This court is not saying that the respondents would or cannot deny him this compassionate allowance even after considering the other factors like kind of service he had rendered till his involvement in the murder case or till his dismissal from service or the poverty of the dependent family if any, but non-consideration of these factors does render the order Annexure A-1 illegal."

Having recorded the aforesaid finding, the Administrative Tribunal directed the respondents to reconsider the representation filed by the petitioner on 9.7.1993, claiming compassionate allowance, under Rule 41 of the 1972 Rules. It is, therefore that, the Director Postal Services, Haryana Circle, Ambala, passed an order dated 20.2.1997 (Annexure P-9). A perusal of the aforesaid order reveals, that the claim of the petitioner for grant of compassionate allowance was declined by the respondents.

In order to claim compassionate allowance, the petitioner challenged the aforesaid order dated 20.2.1997 by approaching the Administrative Tribunal, by filing Original Application No.399-HR of 1997. The aforesaid application was disposed of by the Administrative Tribunal, on 23.4.1997. A perusal of the order dated 23.4.1997 reveals, that a well reasoned speaking order had been passed by the competent authority, and that, all the relevant factors had been taken into consideration, and as such, the order dated 20.2.1997, passed by the Director, Postal Services, Haryana Circle, Ambala, was held to be legal and valid.

Through the instant writ petition, the petitioner has impugned the order dated 20.2.1997 passed by the Director, Postal Services, Haryana Circle, Ambala, as also, the order dated 23.4.1997 passed by the Administrative Tribunal, while disposing of Original Application No.399-HR of 1997.

During the course of hearing, the solitary contention of the learned counsel for the petitioner for grant of compassionate allowance on the basis of Rule 41 of the 1972 Rules, is based on Rule 8 of the aforesaid rules. In fact, while referring to Rule 8 of the 1972 Rules, learned counsel for the petitioner has invited our attention, only to the Explanation recorded

thereunder. The Explanation under Rule 8 of the 1972 Rules, reads as under:-

> "Explanation:-
>
> (a) the expression 'serious crime' includes a crime involving an offence under the Official Secrets Act, 1923.
>
> (b) the expression 'grave misconduct includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (which was obtained while holding office under the Government) so as to prejudicially affect the interest of the general public or the security of the State."

The contention of the learned counsel for the petitioner, based on the aforesaid Explanation is, that the crime committed by the petitioner for which he was convicted by the Additional District and Sessions Judge, Rohtak, on 30.7.1988, cannot stand in his way for the release of compassionate allowance. According to the learned counsel for the petitioner, the offence for which the petitioner was punished by the Additional District and Sessions Judge, Rohtak, is not one of the offences described as falling within the term "serious crime" in the Explanation under Rule 8 of the 1972 Rules.

It is not possible for us to accept the aforesaid contention of the learned counsel for the petitioner. In a civilised society, there cannot be a crime more serious than culpable homicide, specially in the circumstances of the factual position noticed in respect of the petitioner by the Additional District and Sessions Judge, Rohtak. A perusal of the judgement rendered

by the Additional District and Sessions Judge, Rohtak, dated 30.7.1988 reveals, that the petitioner had commited murder by giving a 'Darat' blow from the blade side on the right side of the neck of the deceased. The plea of alibi advanced on behalf of the petitioner before the Addl. District and Sessions Judge, was considered and declined. In the aforesaid circumstances, it is not possible for us to accept the claim of the petitioner under Rule 41 of the 1972 Rules, wherein a government servant can be granted compassionate allowance, if the case is deserving a special consideration. In our view, the claim of the petitioner under Rule 41 of the 1972 Rules, is not such a case.

For the reasons recorded above, we find no merit in this petition, and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

14.03.2007
sk.